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IN THE COURT OF APPEALS OF INDIANA

GARY L. GREEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0512-CR-737
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary L. Miller, Judge
Cause No. 49D01-0107-CF-345

September 12, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

Pursuant to a plea agreement, Gary L. Green pled guilty to murder.[1] He now brings this belated appeal contending the trial court abused its discretion in identifying and weighing the aggravating and mitigating factors and that his fifty-five year sentence is inappropriate.[2]

We affirm.

FACTS AND PROCEDURAL HISTORY

After arguing with his mother, Green went outside to her car, retrieved a gun, loaded it, returned to the room and shot his mother in the head, killing her. Green later confessed to the murder and entered into a plea agreement in which four pending arson charges would be dismissed and the executed portion of the sentence would be capped at fifty-five years. The trial court accepted the plea agreement and entered judgment of conviction for murder. At sentencing, the trial court found the following aggravating factors: Green killed his own mother in a face-to-face confrontation; Green was in a position of trust with his mother; Green killed his mother in a cold-blooded manner; and the victim's family supported an aggravated sentence. As mitigating factors, the trial court found that Green was nineteen years old, had expressed remorse, had no criminal history, and had mental health problems that did not rise to the level of a defense. Finding that the aggravators and mitigators balanced, the trial court sentenced Green to fifty-five years, the presumptive sentence for murder.

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[1] I.C. 35-42-1-1

[2] Green argues that his sentence is manifestly unreasonable, the standard in effect when Green was sentenced in 1997. The standard for sentence review is now inappropriateness, the standard under which we review Green's sentence.

DISCUSSION

On appeal, Green argues that the trial court erred in failing to find several mitigators and that his sentence is inappropriate.[3] Determining the appropriate sentence is within the trial court's discretion, and the trial court will be reversed only upon a showing of a manifest abuse of that discretion. *Berry v. State*, 819 N.E.2d 443, 452 (Ind. Ct. App. 2004), *trans. denied* (2005). The trial court is under no obligation to explain the reasons for imposing the presumptive (now advisory) sentence. *Id.* The finding of mitigating factors is not mandatory and rests with the discretion of the trial court. *O'Neill v. State*, 719 N.E.2d 1243, 1244 (Ind. 1999). A defendant who claims that the trial court erred in failing to find a mitigating factor must demonstrate that such factor is significant and clearly supported by the record. *McCann v. State*, 749 N.E.2d 1116, 1121 (Ind. 2001).

Green claims that in addition to the mitigators which the trial court found, it should also have found that the murder was the result of circumstances unlikely to recur, that Green's character indicates that he was unlikely to commit another crime, that Green would likely respond to probation or short term imprisonment, and that Green accepted responsibility by pleading guilty.[4]

[3] Green also claims that the trial court erred in finding as an aggravator that the victim's family had recommended an enhanced sentence. The trial court did not impose an enhanced sentence, however, and this aggravator is, thus, of no consequence.

[4] Green also claims that the trial court erred in failing to consider his lack of criminal history as a mitigator. However, as noted above, the trial did find this mitigator. Accordingly, we do not address Green's argument on this point.

As to the claims that the murder was the result of circumstances unlikely to recur, that Green was unlikely to commit another crime, and that Green would likely respond to short-term imprisonment or probation, we find no support in the record for any of such claims. In addition to the murder charge, Green faced four felony arson charges. Moreover, there is no showing that Green would not respond in a similar fashion should he be angered by another person in the future. Finally, a sentence to probation or short-term imprisonment were not options available to the trial court. *Angleton v. State*, 714 N.E.2d 156, 161 (Ind. 1999). The offense of murder is not suspendable, and the minimum sentence was forty-five years. I.C. 35-50-2-2(b)(4)(A), I.C. 35-50-2-3(a).

As to the claim that the trial court should have found his guilty plea to be a mitigator, we note that Green had confessed to murder and the case against him was strong and that he received significant benefits from his guilty plea; namely, the dismissal of the four felony arson charges for which he faced an extensive period of incarceration. Our Supreme Court has held that a guilty plea is not automatically a mitigating factor, *Mull v. State*, 770 N.E.2d 308, 314 (Ind. 2002), and that the significance of a guilty plea will vary from case to case. *Francis v. State*, 817 N.E.2d 235, 238 n. 3 (Ind. 2004). Here, the trial court did not err in failing to find that Green's guilty plea was a significant mitigating factor.

Finally, Green's sentence is not inappropriate in light of the nature of the offense or the character of the offender. The trial court found Green's crime to have been "fairly cold-blooded" which was an understatement. And, in addition to this crime, Green had committed four arsons which had caused significant property damage and risk to others in the months before the murder.

Affirmed.

BAILEY, J., and CRONE, J., concur.